

APPENDIX J

**CITY OF FRESNO
PROFESSIONAL AUDIT SERVICES RFP**

RFP No: 9317

SAMPLE AGREEMENT FOR PROFESSIONAL AUDIT SERVICES

(Provided as an example only; actual agreement may vary)

THIS AGREEMENT is made and entered into effective the ____ day of _____, 2015, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and _____ (hereinafter referred to as "AUDITOR").

RECITALS

WHEREAS, CITY desires to obtain professional auditing services for the examination of its financial records and Comprehensive Annual Financial Report – CAFR and Single Audit and Other Compliance Reports (financial statements) pursuant to and in accordance with Section 1216 of the Charter of the City of Fresno and the Single Audit Act of 1984 as amended in 1996, and US. Office of Management and Budget (OMB) Circular A-133, Audits of State and Local Governments and Non-Profit Organizations as revised in 2003 and 2007; and

WHEREAS, CITY desires to obtain professional auditing services for the examination of the financial records related to the Fresno City Employees' Health and Welfare Trust – Self-Insured Medical Plans, the results of which are include in the CAFR; and

WHEREAS, CITY desires to obtain professional services related to Applying Agreed-upon Procedures on compliance and internal control over reporting required data to the Federal Transit Administration (FTA) following standards as required for completion of the Funding Allocation Statistics form (FFA-10). – Fresno Area Express

WHEREAS, CITY desires to obtain professional auditing services for the examination of the financial records in accordance with and related to the types of compliance requirements described in the Passenger Facility Charge Audit Guide for Public Agencies (Guide) issued by the Federal Aviation Administration applicable to the Airport's Passenger Facility Charge (PFC) program; and

WHEREAS, CITY desires to obtain professional agreed-upon procedures applied to Appropriations Limit Worksheet as recommended by the League of California Cities (League) performed solely to assist the City in meeting requirements of Section 1.5 of Article XIIB of the California Constitution; and

WHEREAS, AUDITOR is a certified public accounting firm engaged in the business of examining financial statements in accordance with generally accepted auditing standards, and AUDITOR warrants and represents that the persons who will be performing the services required by this AGREEMENT are professionally and legally capable of performing such services, and that the partners of such firms responsible for the services hereunder, are certified public accountants, and that they are duly authorized to practice and are licensed in the State of California.

WHEREAS, AUDITOR acknowledges that this AGREEMENT is subject to the requirements of Fresno Municipal Code Section 4-107 and Administrative Order No. 6-19, and

WHEREAS, this AGREEMENT will be administered for the CITY by its Finance Directory/Controller (hereinafter referred to as "Administrator") or his/her designee.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained, to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Scope of Services.

(a) In accordance with generally accepted auditing standards, AUDITOR shall audit CITY'S Comprehensive Annual Financial Report ("CAFR"), perform a financial and compliance audit of federal assistance received by CITY, and prepare an audit report for each fiscal year beginning with FY2015 and ending with FY2019. It is the intent of the City to retain the audit firm for a period a four (4) years with three (3) optional one-year extensions. The contract will not exceed seven years and is subject to the review and recommendation of the Finance Director/City Controller, or his/her designee and the amount of the availability of an appropriation.

Whenever used in this AGREEMENT, "fiscal year" shall mean the twelve month fiscal period of CITY which commences on July 1 in every year and ends on the following June 30. AUDITOR shall conduct audits of the financial statements in accordance with generally accepted auditing standards, "Governmental Auditing Standards" issued by the Comptroller General of the United States and the provisions of the Single Audit Act of 1984 as amended in 1996, and US. Office of Management and Budget (OMB) Circular A-133, Audits of State and Local Governments and Non-Profit Organizations as revised in 2003 and 2007. Such standards, circulars, supplements or guides require that the audits be planned and performed to obtain reasonable rather than absolute, assurance about whether the financial statements are free of material misstatement whether caused by error, fraudulent financial reporting or misappropriation of assets. Accordingly, a material misstatement, whether caused by error, fraudulent financial reporting or misappropriation of assets, may remain undetected. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. As a result, an audit is not designed to detect errors or fraud that are immaterial to the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. AUDITOR'S work shall provide a reasonable basis for its reports on the financial statements and on matters of compliance.

(b) AUDITOR shall audit the financial records of the Fresno City Employees' Health and Welfare Trust which are included in the CAFR for each fiscal year during the term of this AGREEMENT beginning with FY2015 and ending with FY2019. AUDITOR shall make the examination in accordance with generally accepted auditing standards.

(c) AUDITOR shall apply Agreed-upon Procedures on compliance and internal control over reporting required data to the Federal Transit Administration (FTA) following standards as required for completion of the Funding Allocation Statistics form (FFA-10) – Fresno Area Express (FAX) National Transit Data Base Report (NTD) for each fiscal year during the term of this AGREEMENT beginning with FY2015 and ending with FY2019.

(d) For each such fiscal year, AUDITOR shall perform compliance testing in accordance with and related to the types of compliance requirements described in the Passenger Facility Charge Audit Guide for Public Agencies (Guide) issued by the Federal Aviation Administration applicable to the Airport's Passenger Facility Charge (PFC) program.

(e) It is understood that since AUDITOR'S examinations as described in Subsections 1(a) through 1(b), above, will be based on the concept of testing the data being examined, there is risk that material errors, irregularities, and illegal acts, if they exist, will not be detected. However, AUDITOR shall immediately notify CITY if any such matters are disclosed or come to AUDITOR'S attention during their examinations.

(f) AUDITOR represents and ensures that all financial statement and compliance audits performed pursuant to this AGREEMENT will meet the requirements of the Single Audit Act of 1984 as

amended in 1996, and US. Office of Management and Budget (OMB) Circular A-133, Audits of State and Local Governments and Non-Profit Organizations as revised in 2003 and 2007, and be acceptable to the U.S. Department of Transportation, Federal Transit Administration (FTA), assuming such acceptance is not unreasonably refused.

(g) AUDITOR shall comply with the Single Audit Act of 1984 as amended in 1996, and US. Office of Management and Budget (OMB) Circular A-133, Audits of State and Local Governments and Non-Profit Organizations as revised in 2003 and 2007 in that any instances of defalcation or misuse of federal funds or instances of serious non-compliance with applicable statutes or regulations which come to the attention of AUDITOR during the performance of the services hereunder shall be reported to FTA and CITY'S Finance Director/Controller, Audit Committee and City Management.

(h) Upon request and written authorization of CITY'S Finance Director/Controller, AUDITOR shall provide assistance in the preparation of any report required by the State of California. Upon such request and prior to performing the work, AUDITOR shall provide Finance Director/Controller with its cost to prepare the report(s), including the hourly rates in accordance with Subsection 3(b), below. AUDITOR shall not perform the work unless Finance Director/Controller, after considering such cost, authorizes AUDITOR, in writing, to prepare the report(s).

(i) AUDITOR shall issue all reports pursuant to this AGREEMENT in accordance with laws, regulations, and professional standards applicable to the services hereunder.

(j) For each fiscal year hereunder, AUDITOR shall provide a Management Letter to CITY'S Mayor, Council, Audit Committee and City Manager advising the CITY of significant opportunities observed by AUDITOR for economies in operation, improvements in internal control, and effectiveness of CITY'S utilization of its resources. AUDITOR shall also make appropriate recommendations, if applicable, in a separate letter to CITY'S Finance Director/Controller for similar significant opportunities of improvement in the Finance Department. This letter is to be issued by March 31, or within 30 days of the issuance of the CAFR, immediately following the respective fiscal year.

(k) AUDITOR shall cause said auditing services to be performed by qualified persons having experience suitable to the positions and experience specified in Subsection 3(b), below.

2. Term.

The term of this AGREEMENT shall begin upon execution of this AGREEMENT by both parties and ends March 31, 2019 or as soon as all reports related to fiscal year 2018 are completed and issued, unless otherwise extended or terminated as provided for in this AGREEMENT.

3. Compensation.

(a) AUDITOR'S sole compensation for satisfactory performance of all services required or rendered pursuant to this AGREEMENT for each fiscal year shall be a total fee not to exceed the respective "All-inclusive Professional Fee" amount set forth in Subsection 3(c), below, paid in accordance with the hourly rates set forth in Subsection 3(b), below, and limited by the amounts set forth for the respective service in Subsection 3(c). Such total fee amount includes all expenses incurred by AUDITOR in performance of such services.

(b) Except for FY2016 through FY2019 services performed pursuant to Subsection 1(h) of this AGREEMENT, all services shall be paid at the following hourly rates:

	<u>Rate Per Hour</u>
Partner	\$ _____
Manager	_____
Supervisory staff	_____
Staff	_____
Support Staff	_____

Services performed pursuant to Subsection 1(h) for FY2015 shall be paid at the preceding hourly rates. Any increase to the hourly rates for such services for subsequent fiscal years shall not exceed five percent (5%) of the hourly rates for the immediately preceding fiscal year.

(c) In no event, shall the fee and expenses for the respective audit service(s) exceed the amounts indicated below:

Services

	<u>FY 15</u>	<u>FY 16</u>	<u>FY 17</u>	<u>FY 18</u>
• CAFR & Letters*	\$ _____	\$ _____	\$ _____	\$ _____
• Successor Agency to the RDA (no stand-alone report) – billed to Successor Agency	\$ _____	\$ _____	\$ _____	\$ _____
• Single Audit	\$ _____	\$ _____	\$ _____	\$ _____
• Health & Welfare (no standalone report)	\$ _____	\$ _____	\$ _____	\$ _____
• Fresno Area Express (FAX) NTD Report	\$ _____	\$ _____	\$ _____	\$ _____
• Passenger Facility Charges (PFC) Airports – billed to Airports	\$ _____	\$ _____	\$ _____	\$ _____
Total Professional Fees				
• Out of Pocket Expenses**	\$ _____	\$ _____	\$ _____	\$ _____

*Letters - Subsection 1(j) herein.

** Meals & Lodging, Transportation, Mail/Courier/Delivery Charges.

(d) Statements may be rendered not more than once per month, as the work progresses. Such statements shall be payable by CITY within 45 days of receipt. CITY shall not be obligated to reimburse any expense for which it has not received a detailed invoice with applicable copies of representative and identifiable receipts or records substantiating such expense.

(e) The parties may modify this AGREEMENT to increase the scope of services or provide for the rendition of services not required by this AGREEMENT, which modification shall include an agreed upon increase in AUDITOR'S compensation. Any increase or change in the scope of services must be made by written amendment to the AGREEMENT signed by an authorized representative for each party. AUDITOR shall not be entitled to any additional compensation if work is performed prior to a signed written amendment.

4. Additional Work or Extraordinary Services.

The maximum annual "All-inclusive Professional Fee" in Section 3, above, contemplates that conditions satisfactory to the normal progress and completion of the examinations will be encountered and CITY accounting personnel will furnish assistance in connection with the preparation of necessary detail schedules and the production of documents for AUDITOR'S inspection. In the event that extraordinary circumstances are encountered making it necessary for AUDITOR to do additional work, AUDITOR shall report such conditions immediately to CITY'S Finance Director/Controller, prior to performing the additional work, for Finance Director/Controller's written directions. AUDITOR shall not be entitled to any additional compensation if work is performed prior to CITY'S Finance Director/Controller providing written authorization for such work and compliance with Subsection 3(e), above. All AUDITOR'S requests for authorization to perform additional work shall be submitted to the Finance Director/Controller. Any approved additional work shall be compensated based on the hourly rates in Subsection 3(b), above.

5. Completion and Number of Audit Reports.

(a) AUDITOR shall issue one original report on the combined general purpose financial statements to be included in the CAFR. AUDITOR shall issue thirty (30) copies of the single audit reports and twenty-five (25) copies of all other financial statements and audit reports to be issued in accordance with Section 1 of this AGREEMENT. AUDITOR agrees to complete and provide all reports for the respective fiscal year no later than March 28, immediately following, provided that the books and records are closed for audit, and all account analyses and requested schedule preparation is completed by the dates, or any extensions, agreed upon by CITY and AUDITOR.

(b) It is agreed that AUDITOR shall be liable for and shall pay to CITY, as fixed, and agreed, liquidated damages, and not as a penalty, the sum of \$500 per CITY work week for each CITY work week of delay in providing the reports from the date for completion as specified in Subsection 5(a), above, or in any written extension of time granted by CITY. CITY may withhold such sum accrued from any payment due AUDITOR pursuant to this AGREEMENT. For purposes of this subsection, "CITY work week" shall mean five (5) CITY business days. If AUDITOR is delayed in performing due to a cause(s) not within its control, AUDITOR will not be liable for such delay in its performance and the period for performance will be extended by the same period of such delay. AUDITOR shall notify CITY within 24 hours of any delay of the cause(s) for such delay. If CITY and AUDITOR are unable to agree as to the cause of AUDITOR'S delay herein, the parties agree to submit to non-binding arbitration, before an arbitrator and at a location agreed upon by both parties, at the earliest practicable date. The cost of arbitration will be shared equally by both parties.

(c) CITY Finance Director/Controller and his/her staff will provide a minimum of 400 hours of combined staff support time during the period of June through December of each calendar year of this AGREEMENT. A Principal Accountant/Senior Accountant-Auditor and/or an Accountant-Auditor and all other staff as necessary shall be assigned to the audit during such period. Audit schedules to be prepared by CITY will be provided, following request by AUDITOR, by the date(s) mutually agreed upon by the parties. Any extensions of time for providing such audit schedules will be mutually agreed upon by the parties.

(d) Time is of the essence in the performance of this AGREEMENT by both parties.

6. Detection of Irregularities and Illegal Acts.

CITY and AUDITOR acknowledge that the financial statement audits covered by the AGREEMENT shall be conducted in accordance with generally accepted auditing standards, "Governmental Auditing Standards" issued by the Comptroller General of the United States and the provisions of the Single Audit Act, and the OMB Circular A-133 and "OMB's Compliance Supplement published by the U.S. Office of Management and Budget." Such standards, circulars, supplements or guides require that the audits be planned and performed to obtain reasonable rather than absolute, assurance about whether the financial

statements are free of material misstatement whether caused by error, fraudulent financial reporting or misappropriation of assets. According, a material misstatement, whether caused by error, fraudulent financial reporting or misappropriation of assets, may remain undetected.

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. As a result, an audit is not designed to detect errors or fraud immaterial to the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. AUDITOR'S work shall provide a reasonable basis for its reports on the financial statements and on matters of compliance.

7. Notification to City of Irregularities / Illegal Acts.

AUDITOR shall make an immediate, written report of any and all irregularities and illegal acts or indications of illegal acts of which they become aware. Such reports shall be addressed to the following persons.

(a) If committed by an agent or employee of, or by, CITY Finance Director/Controller; direct notification to the City Manager, Audit Committee and the City Attorney.

(b) If committed by an agent or employee of, or by, CITY Chief Administrative Officer(s), i.e., City Managers or Deputy City Manager; direct notification to the City Council, Audit Committee and City Attorney.

(c) If committed by an agent or employee of, or by, the Mayor and/or any Council Members; direct notification to the City Council, Audit Committee the City Attorney and any other person or entity as identified under applicable law.

8. Engagement Letter

At the beginning of each engagement year, the CITY will sign an engagement letter, as required by industry standards, which summarizes and reaffirms the aspects of the written contract between the AUDITOR and the CITY, stating both parties' understanding of the professional relationship. The letter allocates, in the same limiting language as the contract, the responsibilities of the engagement for the AUDITOR and the CITY, and it's a communication link, providing both parties with a focus and an opportunity to recall the specifics of the contract.

The letter restates what the engagement entails, ensuring that the AUDITOR and the CITY have the same point of view as to the intent of the engagement.

The engagement letter will cover:

- the purpose of the engagement;
- specifically what the AUDITOR "will and won't do" (the scope);
- CITY instructions and responsibilities;
- reliance on facts the CITY gives the AUDITOR;
- known adverse or negative conditions or circumstances;
- billing rates and estimates;
- request for the CITY'S signature; and
- instructions to return the signed engagement letter.

In addition, engagement letters may include:

- warnings about inadequate internal control;
- limitations on distribution of financial statements (what the CITY intends to do with them);
- record retention policy.

Any discrepancies and/or inconsistencies between the Engagement Letter and the AGREEMENT will be superseded by the AGREEMENT.

9. Audit Representation Letter.

During the course of the audit engagement, the parties acknowledge that CITY personnel will make a variety of oral representations in response to questions raised by AUDITOR. CITY also acknowledges that Statement of Auditing Standard No. 19 requires that written representation must be obtained by AUDITOR which confirms the oral representations. While there is no comprehensive list of items that must be included in a representation letter, SAS No. 19 identifies the following items that will ordinarily be included:

- (a) The City's statement of responsibility for the financial statements
- (b) The availability of all records including minutes of Council meetings and/or other meetings as may be appropriate
- (c) Statement that there are no significant misstatements in the statements and no unrecorded transactions.
- (d) Related party disclosures
- (e) The City's noncompliance with any contracts
- (f) Subsequent events
- (g) Irregularities
- (h) Restrictive Covenants
- (i) Noncompliance with reporting requirements of regulatory agencies
- (j) Plans and intentions that affect amounts on the financial statements
- (k) Inventory representations
- (l) Losses from sales commitments
- (m) Title to assets, liens, or pledges as collateral
- (n) Repurchase agreements
- (o) Losses from purchase commitments
- (p) Illegal acts and related loss contingencies
- (q) Other liabilities and gain or loss contingencies
- (r) Unasserted claims or assessments that counsel feels are likely to be asserted
- (s) Options, agreements and restrictions on assets
- (t) Statement that the representation letter pertains to the financial statements

9. Responsibilities of Each Party to the AGREEMENT.

AUDITOR will advise CITY of generally accepted accounting principles applicable to its activities as a local government unit. However, management of CITY remains responsible for (a) preparation of accurate financial statements prepared in accordance with generally accepted accounting principles applicable to governmental units such as CITY; (b) establishing and maintaining effective internal control over financial reporting and safeguarding of assets; (c) properly recording transactions in the records; and (d) identifying and ensuring that CITY complies with the laws, regulations and generally accepted accounting principles applicable to its activities.

10. Reports on Compliance and Internal Control.

AUDITOR shall issue all reports pursuant to AGREEMENT in accordance with applicable laws, regulations, and professional standards. AUDITOR's reports on compliance will address material errors; fraud; violations of compliance requirements and other responsibilities imposed by state and federal statutes and regulations and assumed by contracts; and any state or federal grant, entitlement or loan program questioned costs of which AUDITOR becomes aware, consistent with requirements of the

standards and circulars identified in AGREEMENT. AUDITOR's reports on internal control shall include any reportable conditions and material structural or operational weaknesses in systems of CITY of which AUDITOR becomes aware as a result of obtaining an understanding of internal control consistent with requirements of the standards and circulars identified in the AGREEMENT.

11. Circumstances Leading to Termination of AGREEMENT.

If circumstances arise relating to the conditions of CITY records, the availability of sufficient, competent evidential matter, or indications of a significant risk of material misstatement of the financial statements because of error, fraudulent financial reporting, misappropriation of assets or noncompliance which are not curable within seven (7) calendar days and which in AUDITOR's professional judgment prevents AUDITOR from completing the audits; AUDITOR retains the right, upon not less than seven (7) calendar days written notice to CITY, to take a course of action permitted by professional standards, law, and in accordance with provisions contained in Subsection 12 (c) of this AGREEMENT.

12. Termination of AGREEMENT.

(a) During any fiscal year, either party may terminate this AGREEMENT without cause, upon at least one hundred and twenty (120) calendar days prior written notice of termination to the other party before the end of such fiscal year.

(b) If, for any reason, CITY determines there is insufficient funding available for any fiscal year(s) and the City Council fails to appropriate funds for payment of AUDITOR hereunder, then CITY may terminate this AGREEMENT immediately without any liability whatsoever of CITY to AUDITOR for breach of contract, default, detrimental reliance or any other basis in law or equity, upon written notice of termination to AUDITOR in the manner provided herein.

(c) This AGREEMENT may be terminated immediately by either party upon sixty (60) calendar days prior written notice should the other party fail substantially to observe, fulfill or perform any obligation, covenant, term or condition in accordance with this AGREEMENT. A party will have failed substantially to observe, fulfill or perform any obligation, covenant, term or condition of this AGREEMENT, if such failure is not cured within such sixty (60) calendar days prior written notice and this shall constitute a material default and breach of this AGREEMENT.

(d) In the event of termination not due to the material default of AUDITOR, AUDITOR shall be paid compensation for services satisfactorily performed prior to the effective date of the notice of termination. In the event of termination due to the material default of AUDITOR, CITY may withhold an amount that would otherwise be payable as an offset to, but not in excess of, CITY damages caused by such failure.

(e) This AGREEMENT shall terminate without any liability of CITY to AUDITOR upon the AUDITOR'S filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against AUDITOR.

(f) Immediately upon any termination or expiration of this AGREEMENT, AUDITOR shall (i) immediately stop all work hereunder, (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to CITY any and all unearned payments, if any, and all properties and materials in the possession of AUDITOR that are owned by CITY. Subject to the terms of this AGREEMENT, AUDITOR shall be paid compensation for services satisfactorily performed prior to the effective date of termination. AUDITOR shall not be paid for any work or services performed or costs incurred which reasonably could have been avoided.

(g) In the event of termination due to failure of AUDITOR to satisfactorily perform in accordance with the terms of this AGREEMENT, CITY may withhold an amount that would otherwise be payable as an offset to, but not in excess of, CITY'S damages caused by such failure. In no event shall any payment impair or prejudice any remedy available to the CITY with respect to breach.

(h) In the event CITY terminates the AGREEMENT pursuant to Subsection 12(c), above, or upon any breach of the AGREEMENT by AUDITOR, CITY may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the AGREEMENT; and/or (iii) recover all direct, indirect, consequential, economic or incidental damages for the breach of the AGREEMENT. If it is determined that CITY improperly terminated this AGREEMENT for default, such termination shall be deemed a termination for convenience.

(i) AUDITOR shall provide CITY with adequate written assurance of future performance, upon Administrator's request, in the event AUDITOR fails to comply with any terms or conditions in this AGREEMENT.

(j) AUDITOR shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of AUDITOR and without its fault or negligence such as, acts of God or the public enemy, acts of CITY in its contractual capacity, fire, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. AUDITOR shall notify Administrator in writing as soon as it is reasonable possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Administrator of the cessation of such occurrence.

(k) No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

13. Confidential Information.

Any reports, information, or other data prepared or assembled by AUDITOR pursuant to this AGREEMENT shall not be made available to any individual or organization by AUDITOR without the prior written approval of CITY. During the term of this AGREEMENT, and thereafter, AUDITOR shall not, without the prior written consent of CITY, disclose to anyone any Confidential Information. AUDITOR agrees to comply with Rule 301 of the American Institute of Certified Public Accounts Code of Professional Conduct, *Confidential Client Information*:

A member in public practice shall not disclose any confidential client information without the specific consent of the client.

This rule shall not be construed (1) to relieve a member of his or her professional obligations under rules 202 [ET Section 202.01] and 203 [ET Section 203.01], (2) to affect in any way the member's obligation to comply with a validly issued and enforceable subpoena or summons, or prohibit a member's compliance with applicable laws and government regulations' (3) to prohibit review of a member's professional practice under AICPA or state CPA society or Board of Accountancy authorization, or (4) to preclude a member from initiating a complaint with, or responding to any inquiry made by, the professional ethics divisions or trial board of the Institute or a duly constituted investigative or disciplinary body of a state CPA society or Board of Accountancy.

Members of any bodies identified in (4) above and members involved with professional practice reviews identified in (3) above shall not use to their own advantage or disclose any member's confidential client information that comes to their attention in carrying out those activities. This prohibition shall not restrict members' exchange of information in connection with the investigative or disciplinary proceedings described in (4) above or the professional practice reviews described in (3) above.

The term Confidential Information for the purposes of this AGREEMENT shall include all proprietary and confidential information of CITY, including but not limited to business plans, marketing plans, financial information, designs, drawings, specifications, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in CITY.

14. Ownership of Documents.

All work papers of AUDITOR shall remain the property of AUDITOR. In addition, to the extent that AUDITOR utilizes any of its property (including, without limitation, any hardware or software of AUDITOR or any proprietary or confidential information or trade secrets of AUDITOR) in performing the services hereunder, such property shall remain the property of AUDITOR and CITY shall acquire no right or interest in such property.

15. Use of Auditor's Report for Other Purposes.

AUDITOR's reports on the financial statements will not be included in an official statement or other document involved with the sale of debt instruments without AUDITOR's prior consent. Such consent by AUDITOR will not be required in the event such reports, financial statements and references to AUDITOR or its audit are a part of any litigation or disclosed by CITY as required by law or order of a court of competent jurisdiction.

16. Professional Skill.

It is mutually understood and agreed by and between the parties hereto that inasmuch as AUDITOR and its subcontractors, if any, represents to CITY that AUDITOR is skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the work agreed to be done by it under this AGREEMENT, CITY relies upon the skill of AUDITOR and any subcontractors to do and perform its work in a skillful manner and AUDITOR agrees to thus perform its work and require the same of any subcontractors. Acceptance of its work by CITY shall not operate as a release of AUDITOR or any subcontractors from said standard of care and workmanship.

17. Indemnification.

To the furthest extent allowed by law, AUDITOR shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including, but not limited to personal injury, death at any time and property damage) and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of , pertain to, or relate to the negligence, recklessness or willful misconduct of AUDITOR, its principals, officers, employees, agents or volunteers in the performance of this AGREEMENT.

If AUDITOR should subcontract all or any portion of the work to be performed under this AGREEMENT, AUDITOR shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this AGREEMENT.

18. Insurance.

Throughout the life of this AGREEMENT, AUDITOR shall pay for and maintain in full force and effect all insurance as required in Exhibit B which is incorporated into and part of this AGREEMENT, with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY's Risk Manager or his/her designee at any time and in his/her sole discretion.

The required policies of insurance as stated in Exhibit B shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officials, employees, agent and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

If at any time during the life of the AGREEMENT or any extension, AUDITOR or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this AGREEMENT shall be discontinued immediately, and all payments due or that become due to AUDITOR shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this AGREEMENT. No action taken by CITY pursuant to this section shall in any way relieve AUDITOR of its responsibilities under this AGREEMENT. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

The fact that insurance is obtained by AUDITOR shall not be deemed to release or diminish the liability of AUDITOR, including, without limitation, liability under the indemnity provisions of this AGREEMENT. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by AUDITOR. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of AUDITOR, its principals, officers, agents, employees, persons under the supervision of AUDITOR, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

Upon request of CITY, AUDITOR shall immediately furnish CITY with a complete copy of any insurance policy required under this AGREEMENT, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this AGREEMENT.

If AUDITOR should subcontract all or any portion of the work or services to be performed under this AGREEMENT, AUDITOR shall require each subcontractor to provide insurance protection in favor of CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with AUDITOR and CITY prior to the commencement of any work or services by the subcontractor. AUDITOR and any subcontractors shall establish additional insured status for CITY, its officers, officials, employees, agents and volunteers by using Insurance Service Office (ISO) Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

19. General Terms.

(a) Except as otherwise provided by law, all notices expressly required of CITY within the body of this AGREEMENT, and not otherwise specifically provided for, shall be effective only if signed by CITY'S Finance Director/Controller.

(b) In performing the work or services to be provided hereunder, AUDITOR shall not employ or retain the services of any person while such person either is employed by CITY or is a member of any CITY council, commission, board, committee, or similar CITY body. This requirement may be waived in writing by CITY'S Chief Administrative Officer (City Manager) if no actual or potential conflict is involved.

(c) AUDITOR agrees that duly authorized representatives of CITY, CITY'S federal cognizant agency, currently the Department of Transportation with the Federal Transportation Agency being its direct cognizant agency, and the Comptroller General of the United States shall, until the expiration of three years after final payment under this AGREEMENT, have access to and the right to examine the non-proprietary documents prepared in connection with the audits performed under this AGREEMENT upon reasonable

notice to AUDITOR during normal business hours of AUDITOR. As used in this subsection, non-proprietary documents are documents, workpapers, and other materials which are not, or do not contain, any of AUDITOR'S proprietary or confidential information or trade secrets. AUDITOR agrees to retain said non-proprietary documents for auditing purposes for CITY, CITY's federal cognizant agency, and Comptroller General of the United States until the expiration of three years after final payment under this AGREEMENT.

Records of AUDITOR'S expenses pertaining to the auditing services shall be kept on a generally recognized accounting basis and shall be available to CITY or its authorized representatives upon request during regular business hours throughout the life of this AGREEMENT and for a period of three years after final payment and for any period required by law. In addition, all books, documents, papers, and records of AUDITOR pertaining to the services performed hereunder shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time.

This Subsection shall survive expiration or termination of this AGREEMENT.

(d) Prior to execution of this AGREEMENT by CITY, AUDITOR shall have provided evidence to CITY that AUDITOR is licensed to perform the services called for by this AGREEMENT. If AUDITOR should subcontract all or any portion of the work to be performed under this AGREEMENT, AUDITOR shall require each subcontractor to provide evidence to CITY that subcontractor is licensed to perform the services called for by this AGREEMENT (or that no license is required) before beginning work.

(e) CITY shall give reasonably prompt consideration to all matters submitted to it by AUDITOR for approval to the end that there will be no substantial delays in AUDITOR'S program of work.

(f) CITY shall provide AUDITOR with reasonable access to all necessary records, places and adequate working space to perform their duties hereunder as necessary to be done at the location of the records. The books and records to be audited are maintained or are located at CITY'S finance office at 2600 Fresno Street, Fresno, California. These books and records will be made available to AUDITOR by CITY for their use at said office during "regular" business hours (8 a.m. to 5 p.m., Monday through Friday, except holidays).

20. Conflict of Interest and Non-Solicitation.

(a) Prior to CITY'S execution of this AGREEMENT, AUDITOR shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth attached hereto as Exhibit A. During the term of this AGREEMENT, AUDITOR shall have the obligation and duty to immediately notify CITY in writing of any change to the information provided by AUDITOR on Exhibit A.

(b) AUDITOR shall comply, and require any of its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code 1090 et. seq., the California Political Reform Act (Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). At any time, upon written request of CITY, AUDITOR shall provide a written opinion of its legal counsel and that any subcontractor that, after a due diligent inquiry, AUDITOR and the respective subcontractor(s) are in full compliance with all laws and regulations. AUDITOR shall take, and require any subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, AUDITOR shall immediately notify CITY of these facts in writing.

(c) In performing the work or services to be provided hereunder, AUDITOR shall not employ or retain the services of any person while such person either is employed by CITY or is a member of any CITY council, commission, board, committee, or similar CITY body. This requirement may be waived in writing by the CITY Manager, if no actual or potential conflict is involved.

(d) AUDITOR represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this AGREEMENT or any rights/benefits hereunder.

(e) Neither AUDITOR, nor any of AUDITOR'S subcontractors performing any work hereunder, shall bid for, assist anyone in the preparation of a bid for, or perform any work pursuant to, any other AGREEMENT related hereto unless fully disclosed to and approved by the City Manager, in advance and in writing. AUDITOR and any of its subcontractors shall have no interest, direct or indirect, in any other AGREEMENT with a third party in connection with these services unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. Notwithstanding any approval given by the City Manager under this provision, AUDITOR shall remain responsible for complying with section 20(b), above.

(f) If AUDITOR should subcontract all or any portion of the work to be performed or services to be provided under this AGREEMENT. AUDITOR shall include the provision of this section 20 in each subcontract and require its subcontractors to comply therewith.

(g) This Section 20 shall survive expiration or termination of this AGREEMENT.

21. Nondiscrimination.

AUDITOR shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

During the performance of this AGREEMENT, AUDITOR agrees as follows:

(a) AUDITOR will comply with all laws and regulations, as applicable. No person in the United States shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this AGREEMENT.

(c) AUDITOR will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. AUDITOR shall take affirmative action to ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. AUDITOR agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(d) AUDITOR will, in all solicitations or advertisements for employees placed by or on behalf of AUDITOR, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

(e) AUDITOR will send to each labor union or representative of workers with which it has a collective bargaining agreement or other agreement or understanding, a notice advising such labor union or

workers' representatives of AUDITOR'S commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(f) If AUDITOR should subcontract all or any portion of the services to be performed under this AGREEMENT, AUDITOR shall cause each subcontractor to also comply with the requirements of this section.

22. Independent Contractor.

(a) In the furnishing of the services provided for herein, AUDITOR is acting solely as an independent contractor. Neither AUDITOR, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of CITY for any purpose. CITY shall have no right to control or supervise or direct the manner or method by which AUDITOR shall perform its work and functions. However, CITY shall retain the right to administer this AGREEMENT so as to verify that AUDITOR is performing its obligations in accordance with the terms and conditions thereof.

(b) The AGREEMENT does not evidence a partnership or joint venture between AUDITOR and CITY. Except to the extent otherwise provided in this AGREEMENT, AUDITOR shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, AUDITOR and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to CITY employees. AUDITOR shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this AGREEMENT, AUDITOR shall be solely responsible, indemnify, defend and save CITY harmless from all matters relating to employment and tax withholding for and payment of AUDITOR'S employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in CITY employment benefits, entitlements, programs and/or funds offered employees of CITY whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this AGREEMENT, AUDITOR may be providing services to others unrelated to CITY or this AGREEMENT.

23. Notices.

Any notice required or intended to be given to either party under the terms of this AGREEMENT shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this AGREEMENT or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

24. Binding.

Subject to Section 25 below, once this AGREEMENT is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

25. Assignment.

This AGREEMENT is personal to AUDITOR and there shall be no assignment by AUDITOR of its rights or obligations under this AGREEMENT without the prior written approval of CITY. Any attempted assignment by AUDITOR, its successors or assigns, shall be null and void unless approved in writing by CITY.

AUDITOR hereby agrees not to assign the payment of any monies due AUDITOR from CITY under the terms of this AGREEMENT to any other individual(s), corporation(s) or entity(ies). CITY retains the right to pay any and all monies due AUDITOR directly to AUDITOR.

26. Compliance With Law.

In providing the services required under this AGREEMENT, AUDITOR shall at all times comply with all applicable laws of the United States, the State of California and CITY, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this AGREEMENT.

27. Waiver.

The waiver by either party of a breach by the other of any provision of this AGREEMENT shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this AGREEMENT. No provisions of this AGREEMENT may be waived unless in writing and signed by all parties to this AGREEMENT. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

28. Governing Law and Venue.

This AGREEMENT shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this AGREEMENT and any rights and duties hereunder shall be Fresno County, California.

29. Headings.

The section headings in this AGREEMENT are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this AGREEMENT.

30. Severability.

The provisions of this AGREEMENT are severable. The invalidity or unenforceability of any one provision in this AGREEMENT shall not affect the other provisions.

31. Interpretation.

The parties acknowledge that this AGREEMENT in its final form is the result of the combined efforts of the parties and that, should any provision of this AGREEMENT be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this AGREEMENT in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

32. Attorney's Fees.

If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this AGREEMENT, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

33. Precedence of Documents.

In the event of any conflict between the body of this AGREEMENT and any Exhibit or Attachment hereto, the terms and conditions of the body of this AGREEMENT shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions

contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this AGREEMENT, shall be null and void.

34. Cumulative Remedies.

No remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies at law or in equity.

35. Extent of AGREEMENT.

Each party acknowledges that they have read and fully understand the contents of this AGREEMENT. This AGREEMENT represents the entire and integrated AGREEMENT between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This AGREEMENT may be modified only by written instrument duly authorized and executed by both CITY and AUDITOR.

36. Delegation of Duties.

AUDITOR will not delegate or subcontract its responsibilities under this AGREEMENT without the prior written permission of the City of Fresno.

36. Recycling Program.

In the event AUDITOR maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, AUDITOR at its sole cost and expense shall:

- (i) Immediately establish and maintain a viable and ongoing recycling program, approved by City's Solid Waste Management Division, for each office and facility. Literature describing City recycling programs is available from City's Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.
- (ii) Immediately contact City's Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.
- (iii) Cooperate with and demonstrate to the satisfaction of City's Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

37. No Third Party Beneficiaries.

The rights, interests, duties and obligations defined within this AGREEMENT are intended for the specific parties hereto as identified in the preamble of this AGREEMENT. Notwithstanding anything stated to the contrary in this AGREEMENT, it is not intended that any rights or interests in this AGREEMENT benefit or flow to the interest of any third parties.

38. Exhibits.

Each exhibit and attachment referenced in this AGREEMENT is, by the reference, incorporated into and made a part of this AGREEMENT.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT at Fresno, California, the day and year first above written.

CITY OF FRESNO,
a municipal corporation

PROPOSER FIRM

By: _____
Michael Lima
Finance Director/City Controller

By: _____

Name: _____

ATTEST:
YVONNE SPENCE
City Clerk

Title: _____

By: _____
City Clerk

APPROVED AS TO FORM:
DOUGLAS SLOAN
City Attorney

By: _____
City Attorney Date

Addresses:

CITY:
City of Fresno
2600 Fresno Street, Room 2156
Fresno, CA 93721-3622
Phone: (559) 621-7001
FAX: (559) 488-4636

AUDITOR:

Certified Public Accounts
1234 Anywhere Street
Anywhere, California 99999
Phone No.: (123) 123-1234
Fax No.: (123) 123-1234

Attachments: Exhibit A – Conflict of Interest Disclosure Form
Exhibit B – Insurance Requirements

Proposer's Name _____

EXHIBIT A

**CITY OF FRESNO
SAMPLE AGREEMENT FOR PROFESSIONAL AUDIT SERVICES**

RFP No: 9317

DISCLOSURE OF CONFLICT OF INTEREST – AUDIT SERVICES

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?		
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?		
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?		
4	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?		
5	Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?		
* If the answer to any question is yes, please explain in full below.			

Explanation: _____

Additional page(s) attached.

Signature _____

(name) _____

(company) _____

(address) _____

(city state zip) _____

EXHIBIT B

**CITY OF FRESNO
SAMPLE AGREEMENT FOR PROFESSIONAL AUDIT SERVICES
BETWEEN THE CITY OF FRESNO ("CITY") AND AUDITOR**

RFP No: 9317

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the AGREEMENT) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Professional Liability (Errors and Omissions) insurance appropriate to AUDITOR'S profession. Architect's and engineer's coverage is to be endorsed to include contractual liability.

MINIMUM LIMITS OF INSURANCE

AUDITOR, or any party the AUDITOR subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY:**
 - (i) \$1,000,000 per occurrence for bodily injury and property damage;
 - (ii) \$1,000,000 per occurrence for personal and advertising injury;
 - (iii) \$2,000,000 aggregate for products and completed operations; and,
 - (iv) \$2,000,000 general aggregate applying separately to the work performed under the AGREEMENT.
2. **COMMERCIAL AUTOMOBILE LIABILITY:**

\$1,000,000 per accident for bodily injury and property damage.

OR*

PERSONAL AUTOMOBILE LIABILITY insurance with limits of liability not less than:

 - (i) \$100,000 per person;

- (ii) \$300,000 per accident for bodily injury; and,
 - (iii) \$50,000 per accident for property damage.
3. **WORKERS' COMPENSATION INSURANCE** as required by the State of California with statutory limits.
4. **EMPLOYER'S LIABILITY:**
- (i) \$1,000,000 each accident for bodily injury;
 - (ii) \$1,000,000 disease each employee; and,
 - (iii) \$1,000,000 disease policy limit.
5. **PROFESSIONAL LIABILITY** (Errors and Omissions):
- (i) \$1,000,000 per claim/occurrence; and,
 - (ii) \$2,000,000 policy aggregate.

UMBRELLA OR EXCESS INSURANCE

In the event AUDITOR purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

AUDITOR shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and AUDITOR shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared on the Certificate of Insurance, and approved by, the CITY'S Risk Manager or his/her designee. At the option of the CITY'S Risk Manager or his/her designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or
- (ii) AUDITOR shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

- 1. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. AUDITOR shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.
- 2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
- 3. For any claims related to this AGREEMENT, AUDITOR'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials,

employees, agents and volunteers shall be excess of AUDITOR'S insurance and shall not contribute with it. AUDITOR shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: AUDITOR and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents and volunteers.

If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the AGREEMENT or the commencement of work by AUDITOR.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the AGREEMENT work or termination of the AGREEMENT, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five (5) year discovery period.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the AGREEMENT or the commencement of work by AUDITOR, AUDITOR must purchase "extended reporting" coverage for a minimum of five (5) years after completion of the AGREEMENT work or termination of the AGREEMENT, whichever occurs first.
4. A copy of the claims reporting requirements must be submitted to CITY for review.
5. These requirements shall survive expiration or termination of the AGREEMENT.

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice by certified mail, return receipt requested, has been given to CITY. AUDITOR is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, AUDITOR shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, AUDITOR shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

VERIFICATION OF COVERAGE

AUDITOR shall furnish CITY with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the AGREEMENT and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, AUDITOR shall immediately furnish City with a complete copy of any insurance policy required under this AGREEMENT, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this AGREEMENT.